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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,731	02/15/2002	Ken Pallett	514413-3915	4744
20999	7590	01/15/2004	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			CLARDY, S	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/049,731

Applicant(s)

PALLETT, KEN

Examiner

S. Mark Clardy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2/15, 2/03. 6) ☐ Other:

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Claims 1-40 are pending in this application which has been filed under 35 USC 371 as the national stage of international application PCT/EP00/09339, filed September 8, 2000.

Applicants have been required to elect a species for examination. In the response filed September 22, 2003, applicants elected the species comprising:

Herbicide: isoxaflutole

Safener: isoxadifen.

The claims have been examined only insofar as they read on this elected species. No claims have been held withdrawn from examination.

Claims 4-6, 11, and 14 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim may not depend from another multiply dependent claim. See MPEP § 608.01(n). Accordingly, these claims have not been further treated on the merits.

Claims 1-3, 7-10, 12, 13, and 15-40 are rejected under 35 U.S.C. 135(a) based upon claims 1-12 of Patent No. 6,489,267 (Ruegg).

Failure to present claims and/or take necessary steps for interference purposes after notification that interfering subject matter is claimed constitutes a disclaimer of the subject matter. This amounts to a concession that, as a matter of law, the patentee is the first inventor in this country. See *In re Oguie*, 517 F.2d 1382, 186 USPQ 227 (CCPA 1975).

The following claim numbers from U.S. Patent No. 6,489,267, is suggested to applicant under 35 U.S.C. 135(a) for the purposes of an interference: 10.

The suggested claim must be copied exactly, although other claims may be proposed under 37 CFR 1.605(a).

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Applicant is given ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this communication to copy this patent claim. Failure to do so will be considered a concession that the subject matter of this claim is the prior invention of another under 35 U.S.C. 102(g), and thus also prior art under 35 U.S.C. 103(a) (In re Oguie, 517 F.2d 1382, 186 USPQ 227 (CCPA 1975)), but will not result in the abandonment of this application. THE PROVISIONS OF 37 CFR 1.136 DO NOT APPLY TO THE TIME SPECIFIED IN THIS ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 703-308-4550. The examiner can normally be reached on 7:20 - 3:50.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.



S. Mark Clardy  
Primary Examiner  
Art Unit 1616

January 12, 2004